necessarily relevant when this question is being considered. What is most relevant is the mode in which the company conducts its affairs after the change of intention has taken place; if its course of business after such a change demonstrates that it is carrying on a trade the Court must of necessity reach the conclusion that it is in fact carrying on a trade. In my opinion none of the differences which are said to exist between *Edinburgh Southern Cemetery Co. v. Kinmont*[6] and the present case are of any consequence so far as the decision in this appeal is concerned. I regard the *Edinburgh Southern Cemetery Co.'s case* as being a relevant authority in this case.

The last point which remains to be considered arises out of the proposition put by counsel for the appellants that if the appellants were held to be carrying on a trade they would be entitled to claim the market value of the land as a deduction from the income derived from the sale of burial rights. In support of this proposition counsel for the appellants cited, *inter alia*, the case of *British South Africa Co. v. Commissioner of Income Tax*[13]. It is to be observed that in that case an important part of the business of the appellant company was the acquisition of mining rights on terms which seemed most advantageous to the appellant company. In short, it was the business of the appellant company in that case to acquire and realize mining rights. Now the principle which is ordinarily applicable is to be found in such cases, decided under the English Income Tax Acts, as *Alianza Co., Ltd. v. Bell*[14] which establish that where the income of a taxpayer is derived from the exhaustion of a capital asset no deduction can be allowed for the cost of that asset. What was decided in *British South Africa Co. v. Commissioner of Income Tax*[13] was that this principle is excluded in cases where the article sold is that which it was the business of the taxpayer to acquire and to sell. Now it is clear that in the present case the appellants' business was not the acquisition of land for the purpose of selling it as burial plots. The appellants' business was that of rubber planters but because of the high cost of replanting and the infertile nature of the area in question they decided to use part of it as a cemetery. I have already stated my view that in their transactions concerning the land they only sold certain rights of burial over the plots of land but not the land itself. There is therefore a fundamental distinction between the facts of the present case and those in *British South Africa Co. v. Commissioner of Income Tax*[13]. In my opinion the decision in *British South Africa Co. v. Commissioner of Income Tax*[13] does not support the appellants' contention that deductions of the market value of the land should be allowed. On this point I have reached the conclusion that the principle which was applied in *Alianza Co., Ltd. v. Bell*[14] should also be applied in the present case.

It is clear that under section 14 of the Income Tax Ordinance the appellants are not entitled to any deductions in respect of the market value of the land. There is in fact no authority or power of any kind to allow such deductions and I am therefore compelled to reach the conclusion that the appellants' contention on this point also fails.

In my opinion the appeal should be dismissed with costs.

*Appeal dismissed.*

Solicitors: *Drew & Napier.*

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## ORIENTAL BANK OF MALAYA v. RUBBER INDUSTRY (REPLANTING) BOARD

[C. A. (Thomson C.J., Abdul Hamid and Neal JJ.) March 1, 1957]

[K. L. — F.M. Civil Appeal No. 39 of 1956]

*Bill of Exchange Ordinance, 1949, s. 82 — Meaning of "customer" — Cheque made payable "account payee only" — Cheque collected for wrong person — Whether drawer of cheque has cause of action — Whether bank which collects the cheque has been negligent — Rubber Industry (Replanting) Fund Ordinance, 1952.*

*Post Office — Position of, as agent.*

In this case the respondents issued a cheque in favour of Kok Ann Rubber Estate in the sum of $14,730.89 and the cheque was marked "account payee only". In some way unknown to the respondents the cheque came into the possession of some unauthorised person. Subsequently one Lee Man Choi opened an account with the appellants in the name of Kok Ann Rubber Estate, of which he claimed to be the sole proprietor. The account was opened with the cheque for $14,730.89. The respondents claimed damages. At the trial, the learned trial Judge held: (i) in the circumstances of the case there had been no delivery of the cheque to the payee and therefore the plaintiffs-respondents remained the true owners and were entitled to maintain the action; (ii) Lee Man Choi was a customer of the defendant-appellant banker, and therefore the bank could claim the protection of section 82 of the Bills of Exchange Ordinance, 1949; (iii) the defendant-appellant bank had not discharged the onus of proving that they have acted without negligence and were therefore liable to the plaintiffs-respondents for damages for conversion of the cheque.

The defendants appealed and on appeal it was argued that the respondents had no cause of action in that, at the date of the conversion of the cheque they were not the true owners of the cheque, nor entitled to the immediate possession thereof.

**Held:** the respondents were entitled to maintain an action for conversion of the cheque.

*Cases referred to :—*

(1) *Rubber Industry (Replanting Board) v. Hongkong & Shanghai Banking Corpn.* (1957) M.L.J. 103
(2) *Matthews v. Brown & Co.* (1893–4) 10 T.L.R. 386.
(3) *Lacave & Co v. Credit Lyonnais* (1897) 1 Q.B. 148.
(4) *Great Western Rly. v. London & County Banking Co.* (1901) A.C. 414.
(5) *Ladbroke & Co. v. Todd* (1913–14) 30 T.L.R. 433.
(6) *Commissioners of Taxation v. English, Scottish & Australian Bank* (1920) A.C. 683.
(7) *Arnold & Ors. v. The Cheque Bank* 1 C.P.D. 585.
(8) *Bute v. Barclays Bank Ltd.* (1954) 3 All E.R. 365.
(9) *Official Assignee etc. v. Overseas Chinese Bank* (1934) M.L.J. 76.
(10) *Luttges v. Sherwood* (1895) 11 T.L.R. 233.
(11) *Baker v. Lipton* (1899) 15 T.L.R. 435.

In the Court below the following judgment was delivered :—

**Buhagiar J.** : — In this case there is the following agreed statement of facts :

The plaintiff is a statutory corporation constituted by The Rubber Industry (Replanting) Fund Ordinance, 1952 and has its offices at Mercantile Bank Chambers, Kuala Lumpur. The defendant is a limited company incorporated in the Federation of Malaya carrying on the business of bankers at several towns in the Federation and has its principal branch and place of business at 9 Foch Avenue, Kuala Lumpur.

In July 1954 a firm known as "Kok Ann Rubber Estate" was entitled to payment of a sum of $14,730.89 from Fund "A" cess. In consequence the plaintiff drew a cheque for the sum of $14,730.89 in favour of Kok Ann Rubber Estate on its Fund "A" cess account with the Kuala Lumpur branch of the Chartered Bank of India, Australia and China. The said cheque was signed by the late Mr. Yong Shook Lin as a member of the Board and also by Messrs. Peat, Marwick, Mitchell & Co. the Secretaries and Treasurers of the Board. This latter signature was made by Mr. Villiers a partner in the firm. The cheque was stamped with a rubber stamp crossed "Account payee only" and was dated 9th July 1954.

In the normal course of business the said cheque was dispatched by Messrs. Peat, Marwick, Mitchell & Co. the Secretaries and Treasurers on the 9th July, 1954. In a manner known neither to the plaintiff nor the defendant the said cheque was misappropriated and came into the unauthorized possession of one Lee Man Choi.

The said Lee Man Choi visited the Kuala Lumpur branch of the Defendant Bank on the 13th July 1954 and produced the cheque payable to Kok Ann Rubber Estate his identity card and the duplicate original of Form A under the Buisness Registration Ordinance. The duplicate original of Form A showed that the particulars had been registered pursuant to the Business Registration Ordinance and bore the official stamp of the Registrar of Businesses. It was attested by an Advocate and Solicitor and showed that Lee Man Choi of 69, Murray Street, Seremban was the sole Proprietor of Kok Ann Rubber Estate. The same Seremban address was also on the identity card. An official at the Bank after examination of these documents opened an account in the name of Kok Ann Rubber Estate in the usual way. The person who so opened the account was unknown to the Bank prior to the date on which the account was opened. The licence number of the form which was produced was No. 46534 and subsequent investigations at the Business Registry disclosed that that licence number referred to a firm of tin miners known as the Ban Hin Kongsi No. 2 Mine with a principal place of business at Batu Puteh, Kampar.

The account having been opened with the said cheque of $14,730.89 a cheque for $10,000 was paid on July 14th, a further for $4,700 on July 16th and yet another cheque for $150 on July 30th. The balance remaining $80.89 still stands to the credit of that account.

In August 1954 the Kok Ann Rubber Co. enquired of the Secretaries to the plaintiff when they would receive their refund of cess. The Secretaries and Treasurers ascertained that the cheque had been paid by the Chartered Bank on the 14th July 1954 and informed the Kok Ann Rubber Company accordingly. The latter Company replied that they had not received the cheque and the Secretaries ascertained from the Chartered Bank that payment had been collected through the Kuala Lumpur Branch of the Oriental Bank of Malaya Limited. The Kok Ann Rubber Company was so informed and stated that the estate did not operate an account with the Oriental Bank. A representative of the Secretaries then visited the Oriental Bank saw the manager of the Bank and was informed of the details of the opening of the account as set out above.

One witness, R. V. Pillai, the Chief Clerk of the defendant Bank was called as a witness for the defence. From the evidence of this witness I find established the following facts :

In July 1954 a Chinese, one Lee Man Choi, went to the defendant Bank to open an account; the witness following the procedure adopted by the Bank in such occasions, asked him for his identity card, inquired about his business and for the form of registration with the Registrar and Licensing of Businesses; the practice was to ask for the duplicate original of such document. The identity card and the registration form were produced. As Lee Man Choi gave an address in Seremban the witness asked him why he was opening an account in Kuala Lumpur; Lee Man Choi explained that he had dealings in Kuala Lumpur. The Registration form showed that Lee Man Choi was the sole proprietor of Kok Ann Rubber Estate, it was signed by Lee Man Choi and it had a lawyer's attestation. The particulars were then entered in the usual card kept by the Bank, (Ex. E), a specimen signature was taken and an account opened in the name of Kok Ann Rubber Estate for $14,730.89 on a cheque for that amount presented by Lee Man Choi. The registration form was returned to Lee Man Choi.

No inquiries were made about the accuracy of the information given by Lee Man Choi, the registration form (which was not a genuine one) presented by Lee Man Choi was Form A in the Registration and Licensing of Businesses Rules, 1953 (L.N. No. 155 of 1953), which is a form for application for registration) and no further inquiries were made about the accuracy of the contents of this form. According to this witness, it is the general practice at the defendant Bank to rely on information to be given by the respective firms as regards changes of the partners in the firm.

It is also to be added that the plaintiff's solicitors in their letter dated the 13th October, 1955 addressed to the defendant's solicitors (see p. 13 of Ex. "B") the following particulars are given: "The plaintiff is not aware of the circumstances under which the said cheque was taken except that the cheque was prepared for posting in the usual way but did not reach the addressee", and on the part of the defendant it was not pleaded that the dispatch of the cheque amounted to payment.

The claim of the plaintiffs is for $14,730.89 either as damages suffered by them, the defendant Bank having converted the cheque to its use and wrongfully deprived the plaintiffs of the same, or alternatively as money received by the defendant for use of the plaintiffs.

The relevant provision of law to be considered in relation to these facts is section 82 of the Bill of Exchange Ordinance, 1949 (No. 75 of 1949) and there are the following three issues:—

(a) are the plaintiffs the "true owners" of the cheque?

(b) was Lee Man Choi a "customer" of the defendant Bank? and

(c) was there negligence on the part of the defendant Bank?

In *The Rubber Industry (Replanting) Board v. Hongkong & Shanghai Banking Corporation*[1] I had the opportunity of dealing with the law as regards points (a) and (c) and on these points I refer to my judgment in that case. As regards point (a) the facts in this case are identical to the facts in that case, and for the same reasons I hold that in this case the plaintiffs are the "true owners".

With regard to the second point, that is whether Lee Man Choi was a "customer" of the defendant Bank so as to entitle them to the protection of section 82 of the Bills of Exchange Ordinance, 1949, counsel referred to various cases and it may be convenient if I quote the relevant passages from those cases:

*Matthews v. Brown & Co.*[2] was a case of a stolen cheque which was presented for payment; the Bank discounted the cheque; it was held that the thief was not a "customer". Mr. Justice Cave at p. 387 said:—

> "The word 'customer' involves use and habit. There was nothing of the kind here, and this man who presented the cheque could not be described as a 'customer'. He was a stranger of whom the bankers who paid him knew nothing. They did not even know his name or his place of abode. They knew nothing about him. It is absurd to speak of his being a 'customer' of the Bank. He was an absolute stranger to them. One transaction — the one in question — does not make a man a 'customer'."

In *Lacave & Co. v. Credit Lyonnais*[3] a man who purported to be Pascal Mata Ponce, the last indorsee on a draft, presented the draft to a Bank for collection and after an interval of two or three days the bank paid Ponce the amount. Collins J. at pp. 154 - 155:—

> "Now, I am clearly of opinion on the facts that Ponce was not a customer of the Bank. Sir Robert Reid contended that the section could not be taken to limit the protection to the case of the cheque being collected for a customer in the ordinary sense, that is a person who kept an account at the bank. He says, 'the customer' must be used in a larger sense of the word, and practically, as far as I could see, must be taken to mean any one. I cannot see any dividing line between a person who has an account and any one who chooses to come with a cheque and ask the bank to collect it for him. Sir Robert Reid contended that it must have that larger meaning. He admitted that if it had not that larger meaning, Ponce could not be brought within the definition of 'customer'. He called the attention of the Court to a decision which undoubtedly decided that no one but a customer in the proper sense of the word, a person having an account at the bank, would be entitled to the benefit of the section. That is the case of Mathews v. Brown & Co. decided in the year 1894. I do not think it would have required the authority of that decision to convince me that the Act means what it says, and that protection is only given for obvious reasons to a bank which does collect for a customer in the real sense, if he is a person who has an account at the bank — at all events, if he is a person whose relations are much nearer and closer than those of Ponce in this case."

In *Great Western Railway v. London and County Banking Company*[4], Lord Brampton said, at pp. 422-3 :—

"Huggins had no banking account at all anywhere. It is not necessary to say that the keeping of an ordinary banking account is essential to constitute a person a customer of a bank, for if it were shewn that the cheques were habitually lodged with a bank for presentation on behalf of the person lodging them, and that when honoured the amount was credited and paid out to such person, whether with or without any profit to the bank for so presenting them, I would not say that such transactions might not constitute such person a customer within the meaning of the 82nd section; indeed, I think they would. But as between Huggins and the Wantage branch of the respondents' bank the transactions amounted to nothing of the sort."

And Lord Davey at p. 420 said :—

"But be this as it may, I do not think that the relation of customer and banker was ever established between him and the respondents. It is true that there is no definition of customer in the Act, but it is a well-known expression, and I think that there must be some sort of account, either a deposit or a current account or some similar relation, to make a man a customer of a banker."

In *Ladbroke & Co. v. Todd*[5] Bailhache J. at p. 434 said :—

"At one time there were numerous decisions upon the question whether a banker had received payment for himself or for a customer, but that question had been put an end to by section 1 of the Bills of Exchange (Crossed Cheques) Act, 1906, and the defendant brought himself within the protection of section 82 if he showed that he received payment of the cheque for a customer in good faith and without negligence."

"He thought that the pretended Mr. Jobson was a customer of the defendant's. It was true that it was the first transaction; but he had to look at the relationship between the parties created by the receipt of the cheque. Was he a customer of the bank when he handed the cheque to the defendant? His Lordship said that he was. There must be a time when he began to be a customer. His Lordship thought a person became a customer of a bank when he went to the bank with money or a cheque and asked to have an account opened in his name, and the bank accepted the money or cheque and was prepared to open an account in the name of that person. He thought the person became a customer then, and after that he was entitled to be called a customer of the bank. He did not think it was necessary that the person should have drawn any money or even that he should be in a position to draw money. He thought such person became a customer the moment the bank received the money or cheque and agreed to open an account. He therefore thought that the pretended Mr. Jobson was a customer of the defendant's bank."

In *Commissioners of Taxation v. English, Scottish and Australian Bank*[6], Lord Dunedin, delivering the judgment of their Lordships said at p. 687 :—

"Their Lordships are of opinion that the word 'customer' signifies a relationship in which duration is not of the essence. A person whose money has been accepted by a bank on the footing that they undertake to honour cheques up to the amount standing to his credit is, in the view of their Lordships, a customer of the bank in the sense of the statute, irrespective of whether his connection is of short or long standing. The contrast is not between an habitue and a newcomer, but between a person for whom the bank performs a casual service, such as, for instance, cashing a cheque for a person introduced by one of their customers, and a person who has an account of his own at the bank."

In my view the last case summarises the law as laid down in previous cases and clarifies any apparent inconsistencies resulting from the application of the law to the facts and circumstances in those cases. Adopting the principle laid down in that case to the facts in the present case Lee Man Choi was, in my opinion, clearly a customer of the defendant Bank.

The remaining point is : Was there negligence on the part of the defendant Bank in collecting the cheque? There is no question the Bank acted in good faith.

On the question of negligence I had the opportunity of dealing with the law on the matter in *The Rubber Industry (Replanting) Board v. The Hongkong & Shanghai Banking Corporation*[1] and having nothing further to add to what I said in the judgment in that case I adopt the principles therein enunciated and apply them to the facts in the present case. In my opinion the defendant Bank was negligent as any inquiries made by the Chief Clerk in accepting the cheque on which the account was opened in favour of the Kok Ann Rubber Estate fell far short of a real check on the authenticity of any information given by Lee Man Choi.

Even if Form A presented by Lee Man Choi was genuine that was no evidence that in fact there was a registration of the business shown on that form, or that the partners of the firm were, at that particular time, the persons mentioned in the Form. There was no question of bad faith on the part of the defendant Bank but in my opinion they have not discharged the onus of proving that they acted without negligence and, therefore they are not entitled to the protection of section 82 of the Bills of Exchange Ordinance, 1949, and are liable to the true owners, the plaintiffs for damages for conversion of the cheque.

There shall be judgment for the plaintiffs in the sum of $14,730.89 and costs.

COURT OF APPEAL.

*M. Edgar* for the appellants.

*P. Hall* for the respondents.

**Neal J.** (with whom **Thomson C.J.** and **Abdul Hamid J.** agreed) : — The agreed facts of this appeal as they appear from the agreed bundles of correspondence and documents and the agreed statement of facts tendered by counsel for the respondent/plaintiff on hearing in so far as they are relevant to this appeal are that in the month of July Messrs. Peat, Marwick, Mitchell & Co., Secretaries to the respondent Board, despatched by post a cheque crossed "A/C Payee Only" and dated the 9th July 1954, payable to Kok Ann

Rubber Estates, a firm entitled to payment from the respondent Board of a sum of $14,730.89 from fund A cess. In a manner unknown to both the appellant and the respondent Board the cheque was misappropriated and came into the unauthorised possession of one Lee Man Choi. The said Lee Man Choi opened an account with the appellant bank on the 13th of July 1954 and deposited the said cheque. The appellant bank duly collected from the respondent Board's bankers the amount of the said cheque and deposited it to the credit of the account opened by the said Lee Man Choi, and the said Lee Man Choi duly collected from the appellant bank during the period 14th of July to 30th of July inclusive, sums totalling $14,650 leaving a balance in the account of $80.89. (Note the Agreed Statement of facts says $14,850 but the correct figures are shown in the agreed Bundle of documents).

The substantial ground of appeal in this case is that the respondent Board (plaintiff) had no cause of action in that it, at the date of conversion, was not the true owner of the said cheque, nor entitled to the immediate possession thereof. The term "true owner" is used in three sections of the Bills of Exchange Ordinance, namely sections 79(2), 80, and 80(2), but the Ordinance does not define such term. Similarly the Ordinance imposes no limitation on the person or persons entitled to maintain an action for conversion of the cheque. For this one must look to the Common Law of England applicable to bills of exchange in the Federation of Malaya by virtue of section 96(2) of the Bills of Exchange Ordinance, No. 75 of 1949.

*Arnold & Ors. v. The Cheque Bank*[7] is authority for the statement that the owner is the person entitled to institute or maintain a claim for damages for conversion of a cheque. It was contended on behalf of the appellant bank that by virtue of the Board or its agents having posted the cheque the Board was no longer in the words of McNair J. in *Bute v. Barclays Bank Ltd.*[8] at 368 :—

> ". . . . . at the time of conversion entitled to immediate possession"

and support was claimed from the presumption arising under section 21(3) of the Bills of Exchange Ordinance (No. 75 of 1949).

The question of who may sue for conversion of the cheque was dealt with by the Court of Appeal (Straits Settlements) in *Official Assignee etc. v. Overseas Chinese Bank*[9] where it was held that the right to sue for conversion of a cheque was vested in the person who had the right of possession and the property in the sum of money represented by the cheque and on this aspect the words of Huggard C.J. at page 80 :—

> "In my view the contention of the Appellant on this point is well-founded. It is clear that a cheque is a chattel, it is not denied that the Official Assignee was in lawful possession of this cheque; inasmuch as the cheque represented portion of the property of a bankrupt the Official Assignee had, in my opinion, a definite property in it, the cheque was obtained from him by fraud; and the loss sustained as the result of the wrongful taking of the cheque appears to me clearly to fall upon the property of the bankrupt. It seems to me that on these facts the right to possession of and the property in this cheque are still vested in the Official Assignee and that he is therefore entitled to maintain an action for conversion against any person who, however innocently, has obtained possession of the cheque and has disposed of the proceeds thereof, whether for his own benefit or that of any other person . . . ."

and Gerahty J. at page 82 :—

> "Although it may be argued that this cheque is a chattel merely in the sense that it is a piece of paper the possession of which the plaintiff has been deprived, yet in the particular circumstances of this case, it seems to me that by virtue of his position as Official Assignee he has been deprived not only of the cheque in that sense but of the value it represents to the bankrupt's estate which by law has been vested in him and for which he is accountable."

appear to be relevant. It has been aptly stated by the Earl of Halsbury in *Great Western Railway v. London County Banking Co.*[4] :—

> ". . . . . the supposed distinction between the title to the cheque and the title of money obtained or represented by it seems to me to be absolutely illusory."

The illusory nature of the alleged distinction is clear when one considers the position from the point of view of conversion since no claim for damages for conversion could succeed unless the conversion had resulted in the loss or partial loss of the money or fund the cheque represented.

It is noteworthy in this case that at the time of conversion it was the respondent Board only that could have stopped payment of the cheque and to that extent exercise any control over it and the sum of money it represented; it is also, in my opinion, important to note that under the terms of the Rubber Industry (Replanting) Fund Ordinance, No. 8 of 1952, the Ordinance which creates the respondent Board that the administrators on behalf of the respondent Board are under a statutory duty to *repay to the participants* in the Fund on production of certain evidence the cess collected from those participants less certain deductions (see Clause 5 of First Schedule to the Ordinance). Nothing short of the repayment to the participants from whom the cess was collected would, in my opinion, constitute a discharge of this statutory duty.

In addition it is a well-established principle that the Post Office is the agent of the person to whom the cheque is posted if there be expressed or implied authority to send by post; but if there be no such authority the Post Office is the agent of the sender. See *Luttges v. Sherwood*[10], *Baker v. Lipton*[11].

It is therefore in my opinion abundantly clear that in this case the Post Office was the agent of the respondent Board.

For reasons which are apparent in the decision of the Court of Appeal Straits Settlements previously referred to, I would prefer not to use the term "true owner" but to state that for the above reasons I am of the opinion that the Respondent Board is entitled to maintain an action for conversion of the cheque referred to in these proceedings.

I would dismiss the appeal with costs and order payment out to Respondent of the deposit in Court.

*Appeal dismissed.*

Solicitors: *Bannon & Bailey; Shearn Delamore & Co.*

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## RATNAM & ANOR. v. PUBLIC INSURANCE CO., LTD.

[C. A. (Mathew C.J. (F.M.), Knight and Whitton JJ.) October 24, 1956]

[Singapore — Civil Appeal No. 18 of 1956]

*Road Traffic Ordinance (Cap. 227), s. 51 — Claim against insurers — Vehicle driven by person holding provisional driving licence unaccompanied by licensed driver — Whether vehicle driven with authority.*

This was an appeal against the decision of Whyatt C.J. reported in (1956) M.L.J. 152, where the facts are fully set out. The Court of Appeal dismissed the appeal holding:

(1) the commercial risk undertaken was that the company accepted liability where the car was being driven with the permission of the insured by a competent driver. In this case at the time of the accident the holder of the provisional licence was driving the car on the road in breach of an essential condition of his provisional licence, and therefore, was not by law permitted to drive a car on the road;

(2) the law only permits a person who is learning to drive to drive a car on a road if he complies with the prescribed regulations. If he drives a car in breach of those conditions, then he is driving it without authority under the law.

COURT OF APPEAL.

*Denis Murphy* for the appellant.

*Philip Hoalim Sr.* for the respondents.

**Mathew C.J. (F.M.)** and **Knight J.** (with whom **Whitton J.** agreed): — The plaintiffs-appellants are seeking to recover, under section 51 of the Road Traffic Ordinance (Cap. 227), $20,500 and costs obtained by them in an action for negligence against one Griffin. The car which was involved in the accident was under a hire-purchase agreement from the respondents to the Teng Motor Service. The respondents were also the insurers. Shortly after this transaction the Teng Motor Service were anxious to sell the car and on the 23rd of June 1954 Chow Ah Tek, the sole proprietor of Teng Motor Service, agreed to sell the car to one Griffin for $2,400. It was explained that the various documents in respect of the car could not be transferred to Griffin until Chow Ah Tek had paid off the instalments due under the hire-purchase agreement. Griffin was apparently agreeable and paid $600 as a deposit, promising to pay the balance when funds that he was expecting became available. Later, Chow Ah Tek delivered the car to Griffin's house. It is quite clear that what Chow Ah Tek wanted was to dispose of the car at a profit. He was aware that Griffin only held a provisional licence, and it was for this reason that he delivered the car personally at Griffin's house.

Two months later Griffin was involved in an accident when driving alone in the car, without the supervision of a licensed driver, and one Kanniah s/o Packiri was killed as a result of his negligent driving. The administrators of the estate of the deceased are now seeking to recover from the respondents the fruits of the judgment obtained by them against Griffin, on the ground that the respondents were liable under the terms of the policy of insurance entered into by them with the Teng Motor Service the hirer. The relevant clause of the policy reads:—

"3. In terms of and subject to the limitations of the indemnity which is granted by this section to the insured the Company will indemnify any person who is driving such motor car on the insured's order or with his permission provided that such person (c) holds a licence to drive such motor car or has held and is not disqualified by order of a Court of Law or by reason of any Enactment or regulation in that behalf from holding or obtaining such a licence."

The respondents disclaimed liability on two grounds:—

(i) At the time of the accident Griffin was not driving with the permission of the insured, the Teng Motor Service; and

(ii) Griffin was not covered by the policy as he was unaccompanied, in breach of a condition of his provisional licence, by a licensed driver as supervisor.

In our view, the first ground can be dealt with shortly. The evidence given by Chow Ah Tek negatives his having given Griffin permission to drive. It is not necessary for the decision of this appeal, but I am very doubtful whether a provisional licence is covered by the words "holds a licence to drive such motor car or has held . . . . such a licence". If "licence to drive" includes a provisional licence, then it would follow that liability would exist in respect of a person driving with the permission of the accused, who had previously held a provisional licence and at the moment of driving held no licence at all. The commercial risk undertaken would seem to us to be that the Company accepted liability where the car was being driven with the permission of the insured by a competent driver. Whether Chow Ah Tek did expressly or impliedly give